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19 51. **File No.** D Rents 157

Legal Deptt 42-51

G **BRANCH**

Subject:— Opinion on the Bombay Rents Hotel and Lodging House Rates Control Act 1947

C O N T E N T S.

Legal Department File No. G. Rents / 52(G. Bay

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Office of the R.L.A.

Under sub-section 2 of section 23 of the Bombay Rents Hotel and lodging House Rates Control Act, 1947, if the landlord neglects to make within a reasonable time, after a notice is served upon him by post or in any other manner any repairs which he is bound to make under sub-section (4) of section 23, then the tenant may make the same himself and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord provided that the amount so deducted or recoverable in any year shall not exceed one twelfth of the rent payable by the tenant for that year. In this case the estimated cost of repairs is Rs. 514/- Governemnt can carry out the repairs after giving a notice to the landlord to that effect but Government cannot recover from the landlord in any year more than 1/12th of the yearly rent i.e. upto 1 month's rent.

The Executive Engineer's report at page 249 shows that out of the estimated cost of Rs. 8495, the cost of the work involving improvements and structural additions and alterations amount to Rs. 3354/- Such structural alterations and improvements cannot be carried out by a tenant except with the consent of the landlord. Under section 23, the landlord is bound to carry out the repairs to keep the premises in good and tenantable condition, but for improvements and structural alterations carried out by the landlord with the consent of the tenant, it is permissible for him under section 9 to make reasonable increase in rent if such improvements and alterations do not come under repairs which the landlord is bound to make under section 23(1).

Sd/- J.R.Dhurandhar.
Remembrancer of Legal Affairs.

U.R. to A.C. of R. (G.G.S.) No. G-251, dated the 26th June 1951.

Legal Department.

The following two questions are referred to the R.L.A. for opinion :-

(1) whether the agreements which have already been entered into with the three labourers- Gulab Shinde, Dadu Chhatre and Shankar Rama - are legally correct and enforosable at law.

(2) whether these agreements make these persons sub-tenants according to law.

The case of Shankar Rama who is occupying requisitioned premises is different from the cases of Gulab Shinde and Dadu Chhatre who are occupying premises rented by Government. Shankar Rama's case may therefore be treated separately.

The cases of Gulab Shinde and Dadu Chhatre.-

Section 4(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 provides that the Act shall not apply to any premises belonging to the Government or a local authority or apply as against Government to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by Government, but shall apply in respect of premises let to the Government, or a local authority. As these premises are let to Government, Government cannot sublet the premises in view of the provisions of section 15 of the said Act. However Gulab Shinde and Dadu Chhatre should not be considered strictly as sub-tenants, They are Government Servants and are occupying the rooms because they are the mazdoors working in the Government godowns. In It can be contended that they are occupying the premises as licensees and not as tenants. The agreements however are drafted as if they are tenants at will. When such relationship exists at the time of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 then according to section 4(1) the

...sions of the Act would not apply as against Government. The sub-tenants therefore cannot take any advantage of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. However, so ~~a~~ far as the relationship between Government and these labourer occupiers is concerned for the purposes of eviction ~~xkm~~,etc. they would be considered as tenants and will have to be evicted through the courts inspite of the agreements (Please see R.L.A.'s opinion No. 5690 dated 18.6.48)/.

As regards Shankar Rama, the position is a little different as he is occupying the premises requisitioned under rule 75A of the Defence of India Rules and continued under requisition under the Requisitioned Lands (Continuance of Powers) Act, 1947. Shankar Rama is therefore an allottee i.e. a mere licensee and not a subOtenant. The agreements are not properly drafted. The Requisitioned Lands (Continuance of Powers) Act however does not provide for eviction of allottees without recourse to courts and it seems therefore that such eviction will have to be made through a Court of Law. However, the best course would be to release the premises from such requisition and to direct its continuance of requisition under section 7 of the Bombay Land Requisition Act so that possession of the premises, without recourse to a Court of Law, can be taken under section 11 read with 8 B (1) of the Bombay Land Req-uisition Act, 1948

Sd/-B.D.M.

Additional Secretary to Government.

U.R. to F.C., No. G-345, dated the 4th August 1951.

...S.T. Committee will have to instal their meter on the premises and therefore landlord's consent would be necessary.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to A.C. of R. (G.G.S.) No. G-395 , dt. 28-8-51.

S.C. 20-7

4 copies.

Legal Department.

Bombay Rents Hotel and Lodging House Rates Control Act. 1947 Sections 4(1), 9 and 24
Indian Electricity Act Section 12(2).

The questions for consideration are as follows :-

1). Whether in respect of the 5 shops which are non-requisitioned premises, Government can undertake the repairs of electirc fittings without the consent of the landlord; and

2). If such repairs are carried out with or without the consent of the landlord whether the expenditure can be recovered in whole or in part from the landlord by means of short payment of rent or any other manner.

As the premises are non-requisitioned, presumably they are premises let to Government and the provisions of the Bombay Rents Hotel and lodging House Rates Control Act, 1947 will apply to these premises (ref. section 4(1)). If Government as tenant had enjoyed the essential service viz. lighting of the premises by electricity in the beginning then the landlord cannot cut it off and is bound to restore the service at his cost under section 24 of that Act. However, if Government as tenant did not enjoy this service then the landlord is not bound to give it or to bear the cost incurred by the tenant in respect of it. So in such cases the cost incurred by Government cannot be deducted from the rent or recovered from the landlord in any way. On the contrary in such cases if the landlord gives electricity it would be considered an improvement and under section 9 the landlord would be entitled to an increase in rent.

Under section 12(2) of the Indian Electricity Act, if any work connected with the supply of electricity is to be carried out by a licensee viz. the B.E.S.T. Committee the Landlord's consent is necessary. Even though the work of repairing the electric fitting may be done by Government

Legal Department.

The advice given by the R.L.A. in his U.R. to L. & H.D. No. 11677 dated the 17th August 1950 which is at page 13 ante was based on R.L.A.'s opinion No. 11152, dated the 7th August 1950 which was mentioned in the said U.R. The latter opinion has been since superseded by R.L.A.'s further letter to the Area Lands, Hirings and Disposals Officer No, 12644 dated the 7th August 1951 and on reconsideration R.L.A. has agreed with the view expressed by the Ministry of Law, Government of India that the Bombay Port Trust as a Local authority is exempted from the provisions of the Bombay Rents, Hotel and Lodging House Rates, Control Act, 1947. The Bombay Port Trust would therefore be entitled to recover increased rents from Government.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to D.C.S. (Accounts), No. G-479, dated 6-10-51.

S.C. 20/7

4 copies.

Legal Department.

Bombay Rebts Hotel and Lod-ging House Rates Control Act, 1947 Sections 2,4(1) and 7.

The question referred to by the Civil Supplies Department for R.L.A.'s opinion is not clearly stated. However it appears that opinion is required on the point whether the view expressed by the Civil Supplies Department that the owners of buildings would not be able to get anything more than the rent fixed by the Executive Engineer even if they go to a Court of Law is correct.

The view taken by the Civil Supplies Department is correct only in respect of premises to which the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 applies. According to the P.W.D. Circular, in places where the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 is applicable rent the standard rent is to be certified as reasonable rent by the Executive Engineer. As the premises are let to Government the said Act would apply in respect of such premises (vide section 4(1) of the Act). Under section 7 of the Act it will be unlawful for the owner to claim or to receive any rent in excess of the standard rent except in the circumstances mentioned in the said section. This Act extends to the Bijapur Municipal Borough and the Bagalkot Municipal District under section 2(2). In these areas the standard rent need not be the same as rateable value fixed for purposes of the municipal assessment. As regards other parts of Bijapur District the Act can be extended under section 2(3). If any person is dissatisfied with the rent recommended by the Executive Engineer, it is open for him to get it fixed by the Court under section 11 of the Act.

The P.W.D. Circular further lays down that where the above Act, is not applicable, the reasonableness of rent should be fixed after taking em into account the following factors :-

1). Rateable value of the building.

ii). Rent prevailing in the locality for similar accommodation.

iii). Capital cost of building.

iv). Special circumstances (e.g.building meant and used so far by the owners themselves which is now let on rent or special furnishings or fittings etc.)

In such cases the rateable value of the building is presumably taken into consideration while fixing the reasonable rent. If so, it does not appear necessary to modify the P.W.D. Circular.

Sd/- B.DQ. M.
Additional Secretary to Government.

U.R. to C.S.D. , No. 520, dated the 24th October 1951.

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4 copies.

Legal Department.

The proper course would be to get the standard rent of the godowns fixed by the Court under section 11 of the Rent Act.

Once the standard rent is fixed, the landlord will not be able to claim or receive by way of rent anyg anything in excess of the standard rent. The agreement to bear Municipal taxes in addition to the rent will in effect result in the rent being increased and this will not be legal beyond the amount of thestandard rent fixed by the Court. This would not be a permissible increase as no person can by agreement defeat directly or indirectly the provisions of the Rent Act.

Sd/-B.D.M.

Additional Secretary to Government.

U.R. to F.C., No. G-526, dated the 25th October 1951.

S.C. 21/7

4 copies.

Legal Department.

In respect of premises requisitioned under Rule 75A of the Defence of India Rules and continued under the requisition under the Requisitioned Land (Continuance of Powers) Act, 1947, the landlord cannot be compelled to carry out any repairs. However in respect of premises requisitioned or continued under requisition under the Bombay Land Requisition, 48, under section 8A of that Act, it is the landlord's duty to execute necessary repairs to keep the premises in good and tenantable condition and on the landlord's failure to execute such repairs, Government can cause such repairs to be executed and the cost thereof can be deducted from the compensation payable to the landlord. In this case there is no limit for recoveries in a year as is laid down in section 23 of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947.

In respect of premises in respect of which an order under section 6(4)(b) or section 9A of the Bombay Land Requisition Act, 1948 is passed, the relation of landlord and tenant is established and the premises would be governed by section 23 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947. The same is the position regarding premises rented by Government for the Government Grain Shop. In such cases there is no distinction made in the Act regarding current or special repairs. The landlord is bound to keep the premises in good and tenantable repairs in the absence of an agreement to the contrary by the tenant. But if the special repairs are such as can be held to be improvements or structural alterations made with the consent of the tenant, then the landlord can make reasonable increase in rent under section 9 of the Bombay Rents Hotel and Lodging House Rates (Control) Act if such improvements and alterations do not come under repairs

which the landlord is bound to make under section 23(1) (Please see R.L.A.'s No. G-251, dated 26-6-1951).

When the expenditure incurred on repairs in any year is more than 1/12th of the yearly rent, the excess over a month's rent can be recovered in the subsequent year. (See Additional Secretary's opinion No. 15249 dt. 24-9-51).

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to A.C. of R.(G.G.S.) No. G-585 dated , 27th November 1951.

S.C. 21/7

4 copies.